

Tab 1 CS/SB 404 by HP, Stargel (CO-INTRODUCERS) Hutson, Harrell, Gruters, Mayfield, Baxley, Diaz, Albritton, Broxson; (Compare to H 00265) Parental Consent for Abortion						
715312	D	S		RC, Stargel	Delete everything after	01/21 07:44 AM
974114	AA	S		RC, Stargel	btw L.4 - 5:	01/21 03:12 PM
101260	AA	S	WD	RC, Gibson	Delete L.224:	01/21 02:57 PM
625870	AA	S		RC, Gibson	Delete L.224:	01/21 02:56 PM
715362	AA	S		RC, Gibson	btw L.236 - 237:	01/21 12:21 PM
199112	AA	S		RC, Gibson	btw L.276 - 277:	01/21 12:20 PM
510862	A	S		RC, Gibson	Delete L.152:	01/21 07:53 AM
316896	A	S	WD	RC, Gibson	btw L.236 - 237:	01/21 03:46 PM
594366	A	S	WD	RC, Gibson	btw L.236 - 237:	01/21 03:46 PM
189152	A	S		RC, Gibson	Delete L.236 - 237:	01/21 03:44 PM
907756	A	S		RC, Gibson	Delete L.236 - 237:	01/21 03:45 PM
464842	A	S		RC, Gibson	btw L.292 - 293:	01/21 07:39 AM
Tab 2 CS/SB 406 by HP, Stargel; (Compare to H 00267) Public Records/Minor's Petition to Waive Consent/Abortion						
627086	A	S		RC, Stargel	Delete L.19 - 20:	01/21 08:31 AM

The Florida Senate
COMMITTEE MEETING EXPANDED AGENDA

RULES

Senator Benacquisto, Chair

Senator Gibson, Vice Chair

MEETING DATE: Wednesday, January 22, 2020

TIME: 8:30—10:00 a.m.

PLACE: *Toni Jennings Committee Room, 110 Senate Building*

MEMBERS: Senator Benacquisto, Chair; Senator Gibson, Vice Chair; Senators Book, Bradley, Brandes, Braynon, Farmer, Flores, Hutson, Lee, Montford, Passidomo, Rodriguez, Simmons, Simpson, Stargel, and Thurston

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
1	CS/SB 404 Health Policy / Stargel (Compare H 265, Linked CS/S 406)	Parental Consent for Abortion; Creating the "Parental Consent for Abortion Act"; prohibiting a physician from performing an abortion on a minor unless the physician has been presented with consent from the minor's parent or guardian, as appropriate; providing an exception for a medical emergency; authorizing a minor to petition any circuit court in which the minor resides for a waiver of consent required to obtain an abortion, etc.	
		HP 11/12/2019 Temporarily Postponed	
		HP 12/10/2019 Fav/CS	
		JU 01/15/2020 Favorable	
		RC 01/22/2020	
2	CS/SB 406 Health Policy / Stargel (Compare H 267, Linked CS/S 404)	Public Records/Minor's Petition to Waive Consent/Abortion; Providing a public records exemption for information that could identify a minor which is contained in a record held by the court relating to the minor's petition to waive consent requirements to obtain an abortion; providing for future legislative review and repeal under the Open Government Sunset Review Act; providing a statement of public necessity, etc.	
		HP 11/12/2019 Not Considered	
		HP 12/10/2019 Fav/CS	
		GO 01/13/2020 Favorable	
		RC 01/22/2020	

Other Related Meeting Documents

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Rules

BILL: CS/SB 404

INTRODUCER: Health Policy Committee and Senator Stargel and others

SUBJECT: Parental Consent for Abortion

DATE: January 17, 2020

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Looke/Kibbey</u>	<u>Brown</u>	<u>HP</u>	<u>Fav/CS</u>
2.	<u>Davis</u>	<u>Cibula</u>	<u>JU</u>	<u>Favorable</u>
3.	<u>Looke/Kibbey</u>	<u>Phelps</u>	<u>RC</u>	<u>Pre-meeting</u>

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 404 creates the Parental Consent for Abortion Act in s. 390.01117, F.S. The Act prohibits a physician from performing an abortion on a minor unless the physician has received a notarized, written consent statement signed by the minor and her mother, father, or legal guardian. However, the consent requirement does not apply if:

- The abortion is performed during a medical emergency when there is insufficient time to obtain consent; or
- The minor petitions the circuit court where she resides and receives a judicial waiver of parental consent.

The bill also authorizes first degree misdemeanor penalties for:

- A physician who willfully and intentionally performs an abortion on an unemancipated minor without the required consent; and
- Any person who provides consent who is not authorized to do so.

In addition to the potential for criminal penalties, the bill specifies that failing to obtain consent is prima facie evidence of interference with family relations in an appropriate civil action. Finally, the bill requires a physician who performs an abortion on a minor to report the performance of the abortion and related information to the Department of Health.

The bill takes effect July 1, 2020.

II. Present Situation:

A Minor's Right to Obtain an Abortion

A minor has a constitutional right to consent to and obtain an abortion.¹ However, that right is not without restrictions. For a minor to obtain an abortion in Florida, she must comply with the provisions of the Parental Notice of Abortion Act contained in s. 390.01114, F.S.

Historical Background of Federal Abortion Law

In a series of decisions rendered over several decades, the United States Supreme Court has established principles governing abortion and a minor's right to obtain an abortion.

Roe v. Wade – A Woman's Constitutional Right to Privacy and Abortion

In 1973, the U.S. Supreme Court issued the primary abortion decision, *Roe v. Wade*.² The Court concluded that a woman's right to terminate her pregnancy is entitled to constitutional protection under a right to privacy, even though "The Constitution does not explicitly mention any right of privacy."³ The Court determined that the right of privacy, whether

[F]ounded in the Fourteenth Amendment's concept of personal liberty and restrictions upon state action, as we feel it is, or as the District Court determined, in the Ninth amendment's reservation of rights to the people, is broad enough to encompass a woman's decision whether or not to terminate her pregnancy."⁴

The right, however, is not absolute and is subject to limitations. The Court noted in a later decision, *Planned Parenthood of Central Missouri v. Danforth*,⁵ that the *Roe* Court "emphatically rejected"⁶ the argument

[T]hat the woman's right is absolute and that she is entitled to terminate her pregnancy at whatever time, in whatever way and for whatever reason she alone chooses Instead, this right must be considered against important state interests in regulation."⁷

¹ Abortion is defined as the termination of a human pregnancy with an intention *other than* to produce a live birth or remove a dead fetus. s. 390.011(1), F.S. The procedure may only be performed by a state-licensed physician or osteopathic physician or a physician practicing medicine or osteopathic medicine in the employment of the United States. s. 390.011(9), F.S.

A pregnancy may not be terminated during the third trimester or once a physician has determined that a fetus has achieved viability unless there is a medical necessity. For an abortion to be performed during the third trimester of pregnancy or upon viability, two physicians must certify in writing that, in reasonable medical judgment, the termination is necessary to save the pregnant woman's life or avert a serious risk of substantial and irreversible physical impairment of a major bodily function of the pregnant woman, other than a psychological condition. If a second physician is not available, one physician may certify in writing as to the medical necessity for legitimate emergency medical procedures to terminate the pregnancy. Sections. 390.0111(1) and 390.01112(1), F.S.

² *Roe v. Wade*, 410 U.S. 113 (1973).

³ *Id.* at 151.

⁴ *Id.* at 153.

⁵ *Planned Parenthood of Central Missouri v. Danforth*, 428 U.S. 52 (1976).

⁶ *Id.* at 60.

⁷ *Id.* at 60, 61 (quoting *Roe*, 410 U.S. at 154).

The *Roe* Court reasoned that when certain fundamental rights are involved, a state regulation limiting those rights “may be justified only by a ‘compelling state interest’” and the state regulations “must be narrowly drawn to express only the legitimate state interests at stake.”⁸ The Court noted that a state has an important and legitimate interest in protecting the health of the woman as well as protecting the potentiality of human life.⁹

Planned Parenthood v. Casey – The Undue Burden Standard and Substantial Obstacle Test

In 1992, the U.S. Supreme Court issued another significant abortion decision, *Planned Parenthood of Southeastern Pennsylvania v. Casey*.¹⁰ In upholding abortion regulations, the Court adopted the new “undue burden” standard. An undue burden exists and makes a statute invalid if its “purpose or effect is to place a substantial obstacle in the path of a woman seeking an abortion before the fetus attains viability.”¹¹ The Court held that the undue burden standard is an appropriate means of reconciling a state’s interest in human life with the woman’s constitutionally protected liberty to decide whether to terminate a pregnancy.

Federal Case Law for Parental Involvement Laws and By-Pass Proceedings

In the wake of the *Roe* decision, states began enacting laws to regulate a minor’s access to abortion. Appellate courts attempted to reconcile the right of a minor to obtain an abortion with a parent’s right to be involved in the daughter’s abortion decision. Both the U.S. Supreme Court and the Florida Supreme Court rendered decisions that established frameworks for analyzing whether parental consent and parental notice laws meet constitutional muster.

Planned Parenthood of Central Missouri v. Danforth – Minors are Protected

The U.S. Supreme Court first addressed a parental consent statute in a 1976 decision, *Planned Parenthood of Central Missouri v. Danforth*.¹² The Court struck a Missouri statute that required a minor to obtain the written consent of a parent or person *in loco parentis* before she could obtain an abortion. The Court noted that the state could not impose a blanket parental consent requirement as a condition for abortion and reasoned that the state did not have the constitutional authority to give to “a third party an absolute and possibly arbitrary veto over the decision of the physician” and the minor, “regardless of the reason for withholding the consent.” The Court stated that minors, like adults, are protected under the Constitution and possess constitutional rights. Those rights do not “magically” come into being when someone “attains the state-defined age of majority.”¹³

The majority of the Court noted, however, that there can be little doubt that a state “furthers a constitutionally permissible end by encouraging an unmarried pregnant minor to seek the help and advice of her parents in making the very important decision whether or not to bear a child.”¹⁴

⁸ *Roe* at 155.

⁹ *Id.* at 162.

¹⁰ *Planned Parenthood of Southeastern Pennsylvania v. Casey*, 505 U.S. 833 (1992).

¹¹ *Id.* at 878.

¹² *Planned Parenthood of Central Missouri v. Danforth*, 428 U.S. 52, 60 (1976).

¹³ *Id.* at 74.

¹⁴ *Id.* at 91.

Bellotti v. Baird – A Framework for the Judicial Waiver of Parental Consent

In the 1979 decision, *Bellotti v. Baird*,¹⁵ the U.S. Supreme Court commented that “parental notice and consent are qualifications that typically may be imposed by the State on a minor’s right to make important decisions” because immature minors often lack the ability to take into account immediate and long-range consequences.¹⁶

Although the Court found the particular statute under review unconstitutional because it imposed an “undue burden” on a minor’s right to obtain an abortion, it outlined a path forward for parental consent laws to be held constitutional by establishing a judicial waiver of notice, also referred to as a judicial bypass procedure. The Court stated:

A pregnant minor is entitled in such a proceeding to show either: (1) that she is mature enough and well enough informed to make her abortion decision, in consultation with her physician, independently of her parents’ wishes; or (2) that even if she is not able to make this decision independently, the desired abortion would be in her best interests. The proceeding in which this showing is made must assure that a resolution of the issue, and any appeals that may follow, will be completed with anonymity and sufficient expedition to provide an effective opportunity for an abortion to be obtained. In sum, the procedure must ensure that the provision requiring parental consent does not in fact amount to the “absolute, and possibly arbitrary, veto” that was found impermissible in *Danforth*.¹⁷

The Court concluded that “every minor must have the opportunity – if she so desires – to go directly to a court without first consulting or notifying her parents.”¹⁸ Under the statutory scheme, however, the court may decline to sanction the abortion if it is not persuaded that the minor is mature or that the abortion is in her best interests.

Planned Parenthood v. Casey

The *Casey* decision mentioned earlier also addressed a one-parent consent statute that contained a judicial bypass procedure. With regard to the parental consent provision, the Court stated:

We have been over most of this ground before. Our cases establish, and we reaffirm today, that a State may require a minor seeking an abortion to obtain the consent of a parent or guardian, provided that there is an adequate judicial bypass procedure.¹⁹

¹⁵ *Bellotti v. Baird*, 443 U.S. 622 (1979)

¹⁶ *Id.* at 640.

¹⁷ *Bellotti*, 443 U.S. at 643, 644.

¹⁸ *Id.* at 647.

¹⁹ *Casey*, at 899.

Lambert v. Wicklund – What a Valid Parental Consent Statute Must Contain

In *Lambert v. Wicklund*, 520 U.S. 292, 295 (1997), the Court distilled the constitutional requirements for a judicial bypass procedure which it had set forth in 1992 in *Bellotti v. Baird*. As restated, a constitutional parental consent statute must:

- Allow the minor to bypass the consent requirement if she establishes that she is mature enough and well enough informed to make the abortion decision independently;
- Allow the minor to bypass the consent requirement if she establishes that the abortion would be in her best interests;
- Ensure the minor’s anonymity; and
- Provide for expeditious bypass procedures.

State Parental Involvement Laws for Minors – Parental Notice and Parental Consent

Parental involvement statutes consist of parental *notice* laws and parental *consent* laws. Parental notice laws generally require that one parent, both parents, or a legal guardian be notified by a physician at least 24 or 48 hours before a minor may obtain and a physician may perform an abortion. The parent or legal guardian is not given “veto” authority over the minor’s decision to obtain an abortion. In contrast, parental consent laws generally require that one of a minor’s parents sign a consent form before a minor may obtain an abortion. Notice statutes are “less onerous” than consent statutes and, therefore, are less likely to constitute an undue burden on abortion rights.²⁰

44 States Have Enacted Parental Involvement Laws

Abortion restrictions for minors vary significantly from state to state. According to data published by two opposing advocacy groups, the Guttmacher Institute,²¹ a pro-choice group, and Americans for Life, a pro-life group,²² and independent research, 44 states have enacted laws that require some form of parental involvement when a minor seeks an abortion. These laws can be placed within broad categories, but there are variations and exceptions that distinguish the enactments. The state laws may be categorized as follows:

- 20 states require some form of parental consent.
 - The 3 states that require the consent of *both* parents are: Kansas, Mississippi, and North Dakota.
 - The 17 states that require the consent of a single parent are: Alabama, Arizona, Arkansas, Idaho, Kentucky, Louisiana, Massachusetts,²³ Michigan, Missouri, Nebraska, North Carolina, Ohio, Pennsylvania, Rhode Island, South Carolina, Tennessee, and Wisconsin.
- 11 states require only parental notification. Those states are: Colorado, Delaware, Florida, Georgia, Illinois, Iowa, Maryland, Minnesota, New Hampshire, South Dakota, and West Virginia.

²⁰ *Womancare of Orlando v. Agwunobi*, 448 F. Supp. 2d 1309, 1315 (N.D. Fla. 2006).

²¹ Guttmacher Institute, *Parental Involvement in Minors’ Abortions*, <https://www.guttmacher.org/state-policy/explore/parental-involvement-minors-abortions>.

²² Email from Katie Glenn, Americans United for Life (Nov. 20, 2019) (on file with the Senate Committee on Judiciary).

²³ According to the Massachusetts Judiciary Committee, SB 1209 and its companion, HB 3320, are pending before the Legislature. The bills eliminate the current requirement for minors to obtain parental consent before having an abortion.

- 5 states require both notice and consent. Those states are: Oklahoma, Texas, Utah, Virginia, and Wyoming.
- 7 states have passed laws that are temporarily or permanently enjoined. Those states are: Alaska, California, Indiana,²⁴ Montana, Nevada, New Jersey, and New Mexico.
- 1 state, Maine, has repealed its parental notification law.
- 6 states do not appear to have enacted parental involvement laws. Those states are: Connecticut, Hawaii, New York, Oregon, Vermont, and Washington.

According to the Guttmacher Institute, all of the states that require parental involvement provide for a judicial bypass procedure, except Maryland. There, a physician, has the discretion to provide an abortion if he or she believes that parental notification could lead to abuse of the minor, the minor is mature and capable of giving informed consent, or parental notice would not be in the best interest of the minor.²⁵

Florida Abortion Law and Minors' Rights

The State Constitution's Privacy Provision

The Florida Constitution contains an express privacy provision in Article 1, section 23. A similar provision is not found in the United States Constitution. The Florida Supreme Court has determined that the state provision guarantees "an independent right to privacy."²⁶ As such, Florida courts have interpreted this provision to afford greater privacy rights than the privacy rights of the United States Constitution. The provision states:

Right of privacy.—Every natural person has the right to be let alone and free from governmental intrusion into the person's private life except as otherwise provided herein. This section shall not be construed to limit the public's right of access to public records and meetings as provided by law.

1988 Parental Consent Law

The Legislature amended the then existing termination of pregnancies statute in 1988 to include additional provisions to facilitate the ability of a minor to obtain an abortion without parental consent.²⁷

Judicial Waiver of Notice or Judicial Bypass Procedure

The termination of pregnancies statute, as amended, required an unmarried minor to provide a physician with her written request for an abortion and the written, informed consent of a parent, custodian, or legal guardian. However, as an alternative, the physician could rely on a circuit court order authorizing the abortion without the consent of a parent, custodian, or legal guardian, which is often referred to as a "judicial bypass procedure." The court could authorize the abortion if it found:

- The minor is sufficiently mature to give informed consent;

²⁴ The parental consent law was blocked by the Seventh Circuit Court of Appeals on Aug. 27, 2019. *Planned Parenthood of Indiana and Kentucky, Inc. v. Adams*, 937 F. 3d 973 (7th Cir. 2019).

²⁵ Maryland Code, Health-General s. 20-103.

²⁶ *In re T.W.*, 551 So. 2d 1186, 1190 (1989).

²⁷ Chapter 88-97, s. 6, Laws of Fla.

- The parent, custodian, or legal guardian unreasonably withheld consent;
- The minor fears physical or emotional abuse if the parental authority were requested to consent; or
- Any other good cause shown.

Additionally, the statute provided that if the court found that the minor was not sufficiently mature, the court was required to determine the best interest of the minor and enter an order in accordance with that determination.

Procedural Safeguards

The statute required the circuit court to ensure that:

- The minor's identity would remain anonymous in the proceeding.
- She could participate in the court proceedings on her own or through someone acting on her behalf.
- The proceedings were confidential.
- The proceedings were to be conducted promptly and a decision issued within 48 hours after the petition was filed, but the minor could request an extension.
- An expedited anonymous appeal was available to the minor who requests it.

In re T.W., A Minor - The Florida Supreme Court Held the Parental Consent Statute Invalid

In 1989, in the case of *In re T.W.*, the Florida Supreme Court held the parental consent law unconstitutional. The Court determined that a woman's right to privacy, which includes the right to seek an abortion, also extends to a minor. The Court said the statute failed because it intruded upon the "privacy of the pregnant minor from conception to birth."²⁸ The Court concluded that, under the State Constitution, the state's interest in protecting the potentiality of life by regulating abortion becomes compelling upon viability.²⁹

The Privacy Provision is Involved

The Court construed the State Constitution's privacy provision in the *In re T.W.*, decision. The Court stated that, when an abortion is involved:

Florida's privacy provision is clearly implicated in a woman's decision of whether or not to continue her pregnancy. We can conceive of few more personal or private decisions concerning one's body that one can make in the course of a lifetime, except perhaps the decision of the terminally ill in their choice of whether to discontinue necessary medical treatment.³⁰

The "Compelling Interest Standard" Was Not Met

The Court concluded that, although a minor's rights are not absolute, when privacy rights are involved, the State must demonstrate that the consent statute furthers a "compelling" state interest through the least intrusive means. The state was not entitled to the more relaxed standard of demonstrating a "significant" state interest as required under federal court opinions interpreting the U.S. Constitution.

²⁸ *In re T.W.*, at 1194.

²⁹ *In re T.W.*, at 1193-94.

³⁰ *Id.* at 1192.

The Court supported its determination that the compelling interest standard was not met by observing that other statutes allow a minor to consent, without parental approval, for some medical and surgical procedures other than abortion. The Court noted that parental consent was not required and that an unmarried minor could grant consent when she seeks medical treatment during her pregnancy, when she seeks services for her child, or when she places her child for adoption.³¹

The Least Intrusive Means Were Not Used

The Florida Supreme Court also found that the parental consent statute was not the least intrusive means of furthering a state interest because it did not provide adequate procedural safeguards. The Court noted three safeguards that should have been provided but were not:

- Legal counsel during the judicial waiver proceedings;
- A record of the hearing to memorialize the judge's reasons for denying a petition for waiver; and
- Exceptions from the consent requirement for emergency or therapeutic abortions.”³²

Parental Notice of Abortion Acts of 1999 and 2005

The Legislature first enacted a Parental *Notice* of Abortion Act in 1999. As its name indicates, the Act required that a parent be given advance notice of a child's intent to have an abortion.³³ The statute was challenged in court on the basis that the law violated a minor's right to privacy under the Florida Constitution.³⁴ The Florida Supreme Court determined that the law violated the State Constitution's right to privacy because the minor was not given a method to “bypass” the parental notice requirement when certain circumstances existed.³⁵

In response to the Florida Supreme Court's decision, the Legislature proposed a constitutional amendment that authorized the Legislature, notwithstanding a minor's right to privacy under the State Constitution, to require a physician to notify a minor's parent or guardian prior to an abortion. The amendment was ratified by the voters in 2004.³⁶

After the adoption of the amendment, the Legislature passed another Parental Notice of Abortion Act in 2005.³⁷ In its current version, the statute requires an attending physician to give actual notice, in person or by phone, to a parent or legal guardian of the minor, at least 48 hours before

³¹ *Id.* at 1195.

³² *Id.* at 1196.

³³ Chapter 99-322, Laws of Fla. (Creating s. 390.01115, F.S., effective July 1, 1999. A companion measure, the public records exemption bill that would shield identifying information of the minor, was passed that same session and became Chapter 99-321, Laws of Fla.).

³⁴ FLA. CONST., art. I s. 23.

³⁵ *North Florida Women's Health and Counseling Services v. State*, 866 So. 2d 612 (Fla. 2003).

³⁶ FLA. CONST. art. X. s. 22. The amendment states:

The Legislature shall not limit or deny the privacy right guaranteed to a minor under the United States Constitution as interpreted by the United States Supreme Court. Notwithstanding a minor's right of privacy provided in Section 23 of Article I, the Legislature is authorized to require by general law for notification to a parent or guardian of a minor before the termination of the minor's pregnancy. The Legislature shall provide exceptions to such requirement for notification and shall create a process for judicial waiver of the notification.

³⁷ Chapter 2005-52, s. 2, Laws of Fla.

the inducement or performance of a termination of a pregnancy on the minor.³⁸ If actual notice is not possible after a reasonable effort, the physician performing or inducing the termination of the pregnancy or the referring physician must give constructive notice.³⁹ Parental notice is not required under the Act if certain circumstances are present.⁴⁰ The act contains no criminal penalties for a physician who does not comply with the Act although a noncompliant physician may face administrative fines imposed by the Agency for Health Care Administration.

The constitutionality of the Parental Notice Act was challenged immediately in Federal District Court in *Womancare of Orlando, Inc. v. Agwunobi*.⁴¹ The federal court upheld the constitutionality of the Act and dismissed the plaintiffs' claims that the Act violated due process rights, was unconstitutionally vague, and impermissibly burdened the rights of minors to seek an abortion.

Judicial Waiver of Parental Notice or the Judicial Bypass Proceeding

Venue

The Parental Notice of Abortion Act provides that a minor may petition the circuit court *where she resides* for a waiver of the notice requirements.⁴² The issue of whether an out-of-state minor was precluded from obtaining a judicial waiver and an abortion under this language was addressed in a 2008 appellate decision.⁴³ The First District Court of Appeal decided that the language did not prohibit a minor from Georgia from obtaining a judicial waiver and an abortion in Florida. The court reasoned that the language addressed a "venue" provision and the statute was silent about the venue for nonresident minors and did not expressly prohibit nonresidents from seeking a judicial waiver or an abortion in the state. Accordingly, an out-of-state minor could seek the waiver and abortion in Florida.

The Process

To initiate the process, she may file the petition under a pseudonym or by using initials, as provided by court rule.⁴⁴ The petition must contain a statement that the petitioner is pregnant and notice has not been waived. The court must advise the petitioner that she has a right to court-appointed counsel, and must provide her with counsel, if she requests, at no cost to the young woman.⁴⁵

³⁸ Section. 390.01114(3)(a), F.S. and s. 390.01114(2)(a), F.S.

³⁹ Section 390.01114(3)(a), F.S. Constructive notice is defined as notice given in writing, signed by the physician, and mailed at least 72 hours before the procedure to the last known address of the parent or legal guardian of the minor, by first-class mail and by certified mail, return receipt requested with delivery restricted to the parent or legal guardian. Notice is deemed to have occurred after 72 hours have passed pursuant to s. 390.01114(2)(c). F.S.

⁴⁰ Parental notice is not necessary under s. 390.01114(3)(b), F.S., if: (1) In the good faith clinical judgment of the physician, a medical emergency exists and there is insufficient time for the attending physician to comply with the notification requirements; (2) Notice is waived in writing by the person entitled to notice and the waiver is notarized; (3) Notice is waived by the minor who is or has been married or has had the disability of nonage removed in compliance with law; (4) Notice is waived by the patient because she has a minor child dependent on her; or (5) Notice is waived by a circuit court in a judicial bypass proceeding according to statute.

⁴¹ *Womancare of Orlando v. Agwunobi*, 448 F. Supp. 2d 1309 (N.D. Fla. 2006).

⁴² Section 390.01114(4)(a), F.S.

⁴³ *In re Doe 07-B*, 973 So. 2d 627 (Fla. 1st DCA 2008).

⁴⁴ The Florida Rules of Juvenile Procedure that apply to judicial bypass proceedings are contained in FLA.R.JUV.P.Rule 8.800-Rule 8.840.

⁴⁵ *Id.*

When a minor initiates a judicial bypass proceeding in the circuit court, a private court-appointed attorney is available to represent her should she request counsel.⁴⁶ The statute is clear that private court-appointed counsel approved for this type of work are to be used first for minors who request counsel, but if no attorney is available through the clerk's list of attorneys, then the office of criminal conflict and civil regional counsel in that area will supply an attorney for the proceedings.⁴⁷ Court precedent interpreting the U.S. Constitution says it is essential that the office's records be exempt from public access.

Once a petition is filed, the court must rule and issue written findings of fact and conclusions of law within three business days after the petition is filed. This time period may be extended at the request of the minor.⁴⁸

If the circuit court determines, by clear and convincing evidence, that the minor is sufficiently mature to decide whether to terminate her pregnancy, the court must issue an order authorizing the minor to consent to the abortion without the notification of a parent or guardian. If the court finds that the minor does not possess the requisite maturity to make that determination, it must dismiss the petition.⁴⁹ The court must issue an order authorizing the minor to consent to the performance or inducement of a termination of the pregnancy without notifying a parent or guardian if:

- The court determines by a preponderance of the evidence that the minor is a victim of child abuse or sexual abuse inflicted by her parent or guardian; or
- The court determines by clear and convincing evidence that the notification of a parent or guardian is not in her best interest.⁵⁰

Florida Abortion Statistics

While state laws specify what abortion data must be reported, there is no requirement that the state collect data documenting how many minors receive abortions. Therefore, it is unknown how many minors obtain abortions in the state annually. However, according to the Agency for Health Care Administration, 62,731 abortions or terminations of pregnancy were performed in Florida in 2019 as of October 30, 2019.⁵¹ The agency reported that 70,239 terminations were performed in 2018 and 69,102 were reported in 2017.⁵²

⁴⁶ The chief judge of the circuit maintains a list of qualified attorneys in private practice, by county and by category of cases, and provides the list to the clerk of court in each county. Section 27.40(3)(a), F.S.

⁴⁷ Section 27.511(6)(a), F.S.

⁴⁸ Section 390.01114(4)(b)1., F.S. If the court does not rule within the required 3 business days and the minor has not requested an extension, the minor may immediately petition for a hearing with the chief judge of the circuit. The chief judge is responsible for guaranteeing that a hearing is held within 48 hours after the receipt of the minor's petition and an order must be entered within 24 hours after the hearing. If the circuit court does not grant a judicial waiver of the required parental notice, the minor has a right to appeal and that ruling must be issued within seven days after receipt of the appeal. Section 390.01114(4)(b)2., F.S.

⁴⁹ Section 390.01114(4)(c), F.S.

⁵⁰ Section 390.01114(4)(d), F.S.

⁵¹ According to the Agency for Health Care Administration, this figure might include some abortions performed and reported in early November, 2019, but that is uncertain. Data reporting the total number of abortions performed in 2019 will not be posted until February 2020.

⁵² Agency for Health Care Administration, *Abortion Data – Induced Terminations of Pregnancy [ITOP] Reports*, https://ahca.myflorida.com/MCHQ/Central_Services/Training_Support/Reports.shtml.

Florida Statistics –Petitions filed by Minors for Judicial Bypass Waivers

The Florida Supreme Court, through the Office of the State Courts Administrator, is required to report by February 1 of each year the number of petitions filed in the previous year by minors seeking judicial waiver of parental notice. According to these reports, during the last 10 years, there have been 3,017 petitions filed for a judicial waiver of notice. The courts have dismissed 206 of those petitions.⁵³ Accordingly, judicial waiver of notices are granted in approximately 92.7 percent of all requests. The data from those reports is summarized as follows:

<u>Year</u>	<u>Petitions Filed</u>	<u>Petitions Dismissed</u>	<u>Percentage of Petitions Dismissed</u>
2018	193	11	5.70
2017	224	18	8.04
2016	193	15	7.77
2015	245	13	5.31
2014	242	23 ⁵⁴	9.50
2013	319	33 ⁵⁵	10.34
2012	353	38 ⁵⁶	10.76
2011	391	18 ⁵⁷	4.60
2010	381	10	2.62
<u>2009</u>	<u>476</u>	<u>27</u>	<u>5.67</u>
Total	3,017	206	6.83

III. Effect of Proposed Changes:

CS/SB 404 creates the Parental Consent for Abortion Act in s. 390.01117, F.S.

Consent of Parent of Legal Guardian Required - Subsections (3) and (4)

The Act prohibits a physician from performing an abortion on an unemancipated minor younger than 18 years of age⁵⁸ unless the physician has received a notarized, written consent statement signed by the minor and her mother, father, or legal guardian. The statement must provide that the minor is pregnant, that she intends to seek an abortion, and that her parent or legal guardian consents to the abortion because the abortion is in her best interest. The consent requirement does not apply if:

⁵³ Florida Office of the State Courts Administrator, *Fiscal Years 2009-2018, Parental Notice of Abortion Act, Petitions Filed and Disposed by Circuit and County, January through December* (on file with the Senate Committee on Judiciary).

⁵⁴ Two counties each had one petition filed during calendar year 2013 that was disposed of during calendar year 2014.

⁵⁵ Two counties each had one petition filed during calendar year 2013 that was not disposed of during calendar year 2013.

⁵⁶ Three counties had a total of three petitions filed during calendar year 2011 that were disposed of during calendar year 2012.

⁵⁷ Two counties had a total of three petitions filed in calendar year 2011 that were not disposed of during calendar year 2011.

⁵⁸ An unemancipated minor is someone who has not reached full legal age. A minor is considered emancipated when he or she is independent of parental control, generally as the result of a court order or statute. BLACK'S LAW DICTIONARY (11th ed. 2019).

- The attending physician certifies in the minor's record that a medical emergency⁵⁹ exists and there is insufficient time to obtain consent; or
- Consent is waived because the minor successfully petitions the circuit court where she resides and receives a judicial waiver of the consent requirement.

Procedure for Judicial Waiver of Consent– Subsection (6)

To obtain a judicial waiver of consent, which bypasses the need for parental consent, a minor must petition a circuit court in the area where she resides. She is permitted to participate in the proceedings on her own behalf. The petition must include a statement that she is pregnant and is unemancipated,⁶⁰ that consent from a parent or the legal guardian has not been obtained, and that she wishes to obtain an abortion without first obtaining consent.

Minor's Right to Court-appointed Counsel, Guardian ad Litem

The court must advise the minor that she has a right to court-appointed counsel, and must provide her with counsel upon her request. The court also may appoint a guardian ad litem for the minor who must maintain the confidentiality of the minor's identity. A county is not required to pay the salaries, costs, or expenses of any counsel appointed by the court. A minor may not be charged filing fees or court costs for a petition at either the trial or appellate level.

Confidentiality

The bill requires all court proceedings for the judicial waiver of consent to be confidential and ensure the anonymity of the minor. The minor may file her petition using a pseudonym or only her initials. All documents related to the petition are confidential, may not be made available to the public, and must be sealed. Additionally, all hearings, including appeals, under the bill must remain confidential and closed to the public as provided by court rule.

Time-Sensitive Nature of Proceedings

The bill also declares that the waiver petitions must be given precedence over other matters before the court and establishes accelerated timelines for the court to process petitions as follows:

- The circuit court must rule and issue written findings of fact and conclusions of law within 3 business days after the petition is filed, except that the timeline may be extended at the request of the minor.
- If the court fails to rule within 3 business days, the minor may immediately petition for a hearing to the chief judge who must ensure the hearing is held within 48 hours and that an order is entered within 24 hours after the hearing.
- If the waiver is not granted by the circuit court, the minor may appeal, and the appellate court must rule within 7 days after receipt of the appeal or remand the ruling to the circuit court.

⁵⁹ A medical emergency is defined in s. 390.01114(2)(d), F.S., to mean a condition that, on the basis of a physician's good faith clinical judgment, so complicates the medical condition of a pregnant woman as to necessitate the immediate termination of her pregnancy to avert her death, or for which a delay in the termination of her pregnancy will create serious risk of substantial and irreversible impairment of a major bodily function.

⁶⁰ A circuit court has jurisdiction to emancipate a minor residing in this state upon the filing of a petition under conditions and criteria found in ch. 743, F.S. An emancipated minor may be authorized by the court to perform all acts that the minor could perform if he or she were 18 years of age.

- If remanded, the circuit court must rule within 3 business days of the remand.
- If a ruling is overturned on appeal, the reason must be based on an abuse of discretion by the circuit court and may not be based on the weight of the evidence presented to the circuit court.
- The Florida Supreme Court may provide for an expedited appeal by rule for any minor to whom the circuit court denies a waiver. An order authorizing a waiver is not subject to appeal.

Criteria to Consider for Granting a Judicial Waiver

The court must issue an order waiving the parental consent requirement if the court finds, by clear and convincing evidence, that the minor is sufficiently mature to decide whether to terminate her pregnancy. In making the decision, the court must consider whether there may be any undue influence over the minor's decision by another, as well as the minor's:

- Age.
- Overall intelligence.
- Emotional development and stability.
- Credibility and demeanor as a witness.
- Ability to accept responsibility.
- Ability to assess both the immediate and long-range consequences of her choices.
- Ability to understand and explain the medical risks of terminating her pregnancy and to apply that understanding to her decision.

If the court does not make these findings, it must dismiss the minor's petition.

The court must also grant a waiver of the consent requirement if the court finds, by a preponderance of the evidence, that the minor is the victim of child or sexual abuse, as defined in s. 390.01114, F.S., inflicted by one or both parents or her guardian, or if the court finds, by clear and convincing evidence, that requiring consent is not in the best interest of the minor. Under the bill, the best-interest standard does not include the financial best interest, financial considerations, or the potential financial impact on the minor or her family if she does not terminate the pregnancy. If the court does not make these findings, it must dismiss the petition.

If the court finds evidence of child or sexual abuse of the minor by any person, the court must report the evidence of the abuse as provided in s. 39.201, F.S.

Requirements for the Court

A court that conducts proceedings under the bill must:

- Provide for a written transcript of all testimony and proceedings;
- Issue a final written order containing factual findings and legal conclusions supporting its decision, including factual findings and legal conclusions relating to the maturity of the minor; and
- Order that a confidential record be maintained.

Florida Supreme Court Rulemaking Authority – Subsection (7)

The bill also requests the Florida Supreme Court to adopt rules and forms for petitions to ensure that the judicial waiver of notice proceedings are handled expeditiously, are handled in a manner consistent with the bill, and protect the confidentiality of the minor's identity and the confidentiality of the proceedings.

Criminal Penalties and Civil Liability - Subsection (8)

The bill establishes criminal penalties and civil liability as follows:

- Any person who willfully and intentionally performs an abortion with knowledge that, or with reckless disregard as to whether the minor is unemancipated, without obtaining the necessary consent commits a first degree misdemeanor.⁶¹ The bill provides that it is a defense to prosecution if the minor falsely represented her age or identity to the physician by displaying an apparently valid governmental record or identification such that a careful and prudent person would have relied on the representation. However, this defense does not apply if the physician is shown to have had independent knowledge of the minor's actual age or identity or if the physician failed to use due diligence in determining the minor's age or identity.
- Any person who provides consent who is not authorized to do so commits a misdemeanor of the first degree.
- Failure to obtain consent from a person from whom consent is required is prima facie evidence of failure to obtain consent and of interference with family relations in appropriate civil actions. Such prima facie evidence does not apply to any issue other than failure to obtain consent from the parent or legal guardian and interference with family relations in appropriate civil actions. The civil action may be based upon a claim that the act was a result of negligence, gross negligence, wantonness, willfulness, intention, or other legal standard of care. Exemplary damages may be awarded in appropriate civil actions relevant to violations of this section.
- Failure to comply with the requirements of the Parental Consent for Abortion Act constitutes grounds for disciplinary action under the physician's or osteopathic physician's practice act found in chapters 458 and 459, F.S., respectively, and s. 456.072, F.S., the grounds for discipline as administered by the authority of the Department of Health.

Reporting Requirements – Subsection (5)

The bill requires a physician who performs an abortion on a minor in the past calendar month to submit a monthly report to the Department of Health which must include the following information for each minor upon whom an abortion is performed:

- If the abortion was performed with consent;
- If the abortion was performed during a medical emergency that excepted the minor from the consent requirement and the nature of the medical emergency;
- If the abortion was performed with a judicial waiver of consent;
- Her age; and

⁶¹ A first degree misdemeanor is punishable by a fine not to exceed \$1,000 and imprisonment not to exceed 1 year, as provided in ss 775.083(1)(d) and 775.082(4)(a), F.S.

- The number of times she has been pregnant and the number of abortions that have been performed on her.

Construction and Severability Clause– Subsections (9) and (10)

The bill states that its provisions:

- May not be construed to create or recognize a right to abortion.
- May not be construed to limit the common law rights of parents or legal guardians.
- Are not intended to make lawful an abortion that is currently unlawful.

Additionally, if any provision of the bill is held to be invalid or unenforceable by its terms, or as applied to any person or circumstance, the provision must be construed so as to give it the maximum effect permitted by law. However, if the holding is one of utter invalidity or unenforceability, the provision must be deemed severable and may not affect the remainder of the bill or the application of the provision to other persons not similarly situated or to other dissimilar circumstances.

The bill takes effect July 1, 2020.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

This bill's provisions may implicate the privacy rights established in Art. I, s. 23, of the Florida Constitution. For a discussion on the relevant case law, please see the "Present Situation" section of this analysis.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

CS/SB 404 may have an indeterminate fiscal on the Department of Health and on the State Courts System related to implementing the requirements established by the bill.

VI. Technical Deficiencies:

None.

VII. Related Issues:

CS/SB 404 does not repeal the existing Parental Notice of Abortion Act but leaves it in place. This may result in confusion as to how to interpret the Parental Notification and Parental Consent acts together because their requirements are different.

VIII. Statutes Affected:

This bill creates section 390.01117 of the Florida Statutes.

IX. Additional Information:**A. Committee Substitute – Statement of Substantial Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Health Policy on December 10, 2019:

The CS defines the term “minor” as an unemancipated person younger than 18 years of age, whereas the underlying bill defined “minor” as a person under the age of 18 years.

B. Amendments:

None.



715312

LEGISLATIVE ACTION

Senate

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House

The Committee on Rules (Stargel) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Present subsections (3), (4), (5), and (6) of
section 390.01114, Florida Statutes, are redesignated as
subsections (4), (6), (7), and (8), respectively, new
subsections (3) and (5) are added to that section, and
subsection (1), paragraph (b) of present subsection (3), and
present subsections (4), (5), and (6) are amended, to read:

390.01114 Parental Notice of and Consent for Abortion Act.—



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(1) SHORT TITLE.—This section may be cited as the “Parental Notice of and Consent for Abortion Act.”

(3) TERMINATION OF THE PREGNANCY OF A MINOR.—A physician may not perform or induce the termination of a pregnancy of a minor unless the physician has complied with the notice and consent requirements of this section.

(4)~~(3)~~ NOTIFICATION REQUIRED.—

(b) Notice is not required if:

1. In the physician’s good faith clinical judgment, a medical emergency exists and there is insufficient time for the attending physician to comply with the notification requirements. If a medical emergency exists, the physician shall make reasonable attempts, whenever possible, without endangering the minor, to contact the parent or legal guardian, and may proceed, but must document reasons for the medical necessity in the patient’s medical records. The physician shall provide notice directly, in person or by telephone, to the parent or legal guardian, including details of the medical emergency and any additional risks to the minor. If the parent or legal guardian has not been notified within 24 hours after the termination of the pregnancy, the physician shall provide notice in writing, including details of the medical emergency and any additional risks to the minor, signed by the physician, to the last known address of the parent or legal guardian of the minor, by first-class mail and by certified mail, return receipt requested, with delivery restricted to the parent or legal guardian;

2. Notice is waived in writing by the person who is entitled to notice and such waiver is notarized, dated not more



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than 30 days before the termination of pregnancy, and contains a specific waiver of the right of the parent or legal guardian to notice of the minor's termination of pregnancy;

3. Notice is waived by the minor who is or has been married or has had the disability of nonage removed under s. 743.015 or a similar statute of another state;

4. Notice is waived by the patient because the patient has a minor child dependent on her; or

5. Notice is waived under subsection (6) ~~(4)~~.

(5) PARENTAL CONSENT REQUIRED.—

(a) A physician must obtain written consent from a parent or legal guardian before performing or inducing the termination of a pregnancy of a minor.

1. The consenting parent or legal guardian shall provide to the physician a copy of a government-issued proof of identification and written documentation establishing that he or she is the lawful parent or legal guardian of the minor. The parent or legal guardian shall certify in a signed, dated, and notarized document, initialed on each page, that he or she consents to the termination of the pregnancy of the minor. The document must include the following statement, which must precede the signature of the parent or guardian: "I, (insert name of parent or legal guardian), am the (select "parent" or "legal guardian," as appropriate) of (insert name of minor) and give consent for (insert name of physician) to perform or induce a termination of pregnancy on her. Under penalties of perjury, I declare that I have read the foregoing statement and that the facts stated in it are true." A copy of the parent's or legal guardian's government-issued proof of identification



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70 establishing that he or she is the minor's lawful parent or
71 legal guardian must be attached to the notarized document.

72 2. The physician shall keep a copy of the proof of
73 identification of the parent or legal guardian and the certified
74 statement in the medical file of the minor for 5 years after the
75 minor reaches the age of 18 years, but in no event less than 7
76 years.

77 3. A physician receiving consent from a parent or guardian
78 under this section shall execute for inclusion in the medical
79 record of the minor an affidavit stating: "I, (insert name of
80 physician), certify that, according to my best information and
81 belief, a reasonable person under similar circumstances would
82 rely on the information presented by both the minor and her
83 parent or legal guardian as sufficient evidence of identity."

84 (b) The consent of a parent or guardian is not required if:

85 1. Notification is not required as provided in subparagraph
86 (4)(b)1., subparagraph (4)(b)3., subparagraph (4)(b)4., or
87 subparagraph (4)(b)5.;

88 2. Notification is not required due to the existence of a
89 waiver as provided in subparagraph (4)(b)2., if that waiver is
90 signed by the minor's parent or legal guardian, is notarized, is
91 dated within 30 days before the termination of the pregnancy,
92 contains a specific waiver of the right of the parent or legal
93 guardian to consent to the minor's termination of pregnancy, and
94 a copy of a government-issued proof of identification and
95 written documentation establishing that the person who signed
96 the waiver is the lawful parent or legal guardian, as
97 applicable, of the minor, is attached to the waiver;

98 3. Consent is waived under subsection (6); or



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4. In the physician's good faith clinical judgment, a medical emergency exists and there is insufficient time for the attending physician to comply with the consent requirement. If a medical emergency exists, the physician must make reasonable attempts, whenever possible, and without endangering the minor, to contact the parent or legal guardian of the minor, and may proceed, but must document reasons for the medical necessity in the minor patient's medical records. The physician shall inform the parent or legal guardian, in person or by telephone, within 24 hours after the termination of the pregnancy of the minor, including details of the medical emergency that necessitated the termination of the pregnancy without the parent's or legal guardian's consent. The physician shall also provide this information in writing to the parent or legal guardian at his or her last known address, by first-class mail or by certified mail, return receipt requested, with delivery restricted to the parent or legal guardian.

(c)1. A physician who intentionally or recklessly performs or induces, or attempts to perform or induce, a termination of a pregnancy of a minor without obtaining the required consent pursuant to this subsection commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. A penalty may not be assessed against the minor upon whom a termination of pregnancy is performed or induced or upon whom a termination of pregnancy is attempted to be performed or induced.

2. It is a defense to prosecution that a minor misrepresented her age or identity to a physician by displaying a driver license or identification card issued by the state or



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another state which indicated that the minor was 18 years of age or older and that the appearance of the minor was such that a reasonably prudent person would believe that the minor was not under 18 years of age. To use the defense, a physician must provide a copy of the driver license or identification card used by the minor. The defense does not apply if the physician is shown to have had independent knowledge of the minor's actual age or identity or to have failed to use due diligence in determining the minor's age or identity.

(6)-(4) PROCEDURE FOR JUDICIAL WAIVER OF NOTICE.-

(a) A minor may petition any circuit court in which the minor resides for a waiver of the ~~notice~~ requirements of this section subsection (3) and may participate in proceedings on her own behalf. The petition may be filed under a pseudonym or through the use of initials, as provided by court rule. The petition must include a statement that the petitioner is pregnant and that the requirements of this section have ~~notice~~ ~~has~~ not been waived. The court shall advise the minor that she has a right to court-appointed counsel ~~and shall provide her with counsel upon her request~~ at no cost to the minor. The court shall, upon request, provide counsel for the minor at least 24 hours before the court proceeding.

(b)1. Court proceedings under this section subsection must be given precedence over other pending matters to the extent necessary to ensure that the court reaches a decision promptly. The court shall rule, and issue written findings of fact and conclusions of law, within 3 business days after the petition is filed, except that the 3-business-day limitation may be extended at the request of the minor. If the court fails to rule within



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the 3-business-day period and an extension has not been requested, the minor may immediately petition for a hearing upon the expiration of the 3-business-day period to the chief judge of the circuit, who must ensure a hearing is held within 48 hours after receipt of the minor's petition and an order is entered within 24 hours after the hearing.

2. If the circuit court does not grant judicial waiver of the requirements of this section ~~notice~~, the minor has the right to appeal. An appellate court must rule within 7 days after receipt of appeal, but a ruling may be remanded with further instruction for a ruling within 3 business days after the remand. The reason for overturning a ruling on appeal must be based on abuse of discretion by the court and may not be based on the weight of the evidence presented to the circuit court since the proceeding is a nonadversarial proceeding.

(c) If the court finds, by clear and convincing evidence, that the minor is sufficiently mature to decide whether to terminate her pregnancy, the court shall issue an order authorizing the minor to consent to the performance or inducement of a termination of the pregnancy ~~without the notification of a parent or guardian~~. If the court does not make the finding specified in this paragraph or paragraph (d), it must dismiss the petition. Factors the court shall consider include:

1. The minor's:

a. Age.

b. Overall intelligence.

c. Emotional development and stability.

d. Credibility and demeanor as a witness.



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e. Ability to accept responsibility.

f. Ability to assess both the immediate and long-range consequences of the minor's choices.

g. Ability to understand and explain the medical risks of terminating her pregnancy and to apply that understanding to her decision.

2. Whether there may be any undue influence by another on the minor's decision to have an abortion.

(d) If the court finds, by a preponderance of the evidence, that the petitioner is the victim of child abuse or sexual abuse inflicted by one or both of her parents or her guardian, or by clear and convincing evidence that the requirements of this section are ~~notification of a parent or guardian is~~ not in the best interest of the petitioner, the court shall issue an order authorizing the minor to consent to the performance or inducement of a termination of the pregnancy ~~without the notification of a parent or guardian~~. The best-interest standard does not include financial best interest or financial considerations or the potential financial impact on the minor or the minor's family if the minor does not terminate the pregnancy. If the court finds evidence of child abuse or sexual abuse of the minor petitioner by any person, the court shall report the evidence of child abuse or sexual abuse of the petitioner, as provided in s. 39.201. If the court does not make the finding specified in this paragraph or paragraph (c), it must dismiss the petition.

(e) A court that conducts proceedings under this section shall:

1. Provide for a written transcript of all testimony and



715312

proceedings;

2. Issue a final written order containing factual findings and legal conclusions supporting its decision, including factual findings and legal conclusions relating to the maturity of the minor as provided under paragraph (c); and

3. Order that a confidential record be maintained, as required under s. 390.01116.

(f) All hearings under this section, including appeals, shall remain confidential and closed to the public, as provided by court rule.

(g) An expedited appeal shall be made available, as the Supreme Court provides by rule, to any minor to whom the circuit court denies a waiver of the requirements of this section ~~notice~~. An order authorizing a termination of pregnancy under this subsection ~~without notice~~ is not subject to appeal.

(h) Filing fees or court costs may not be required of any pregnant minor who petitions a court for a waiver of the requirements of this section ~~parental notification under this subsection~~ at either the trial or the appellate level.

(i) A county is not obligated to pay the salaries, costs, or expenses of any counsel appointed by the court under this subsection.

(7) ~~(5)~~ PROCEEDINGS.—The Supreme Court is requested to adopt rules and forms for petitions to ensure that proceedings under subsection (6) ~~(4)~~ are handled expeditiously and in a manner consistent with this act. The Supreme Court is also requested to adopt rules to ensure that the hearings protect the minor's confidentiality and the confidentiality of the proceedings.

(8) ~~(6)~~ REPORT.—The Supreme Court, through the Office of the



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State Courts Administrator, shall report by February 1 of each year to the Governor, the President of the Senate, and the Speaker of the House of Representatives on the number of petitions filed under subsection (6) ~~(4)~~ for the preceding year, and the timing and manner of disposal of such petitions by each circuit court. For each petition resulting in a waiver of the requirements of this section ~~notice~~, the reason for the waiver shall be included in the report.

Section 2. Paragraph (a) of subsection (6) of section 27.511, Florida Statutes, is amended to read:

27.511 Offices of criminal conflict and civil regional counsel; legislative intent; qualifications; appointment; duties.—

(6) (a) The office of criminal conflict and civil regional counsel has primary responsibility for representing persons entitled to court-appointed counsel under the Federal or State Constitution or as authorized by general law in civil proceedings, including, but not limited to, proceedings under s. 393.12 and chapters 39, 392, 397, 415, 743, 744, and 984 and proceedings to terminate parental rights under chapter 63. Private court-appointed counsel eligible under s. 27.40 have primary responsibility for representing minors who request counsel under s. 390.01114, the Parental Notice of and Consent for Abortion Act; however, the office of criminal conflict and civil regional counsel may represent a minor under that section if the court finds that no private court-appointed attorney is available.

Section 3. If any provision of this act or its application to any person or circumstance is held invalid, the invalidity



715312

does not affect other provisions or applications of the act
which can be given effect without the invalid provision or its
application, and to this end the provisions of this act are
severable.

Section 4. This act shall take effect July 1, 2020.

===== T I T L E A M E N D M E N T =====

And the title is amended as follows:

Delete everything before the enacting clause
and insert:

A bill to be entitled

An act relating to abortion; amending s. 390.01114,
F.S.; revising the short title; prohibiting physicians
from performing or inducing the termination of the
pregnancy of a minor unless specified requirements are
satisfied; requiring a physician to obtain written
consent from a minor's parent or legal guardian before
performing or inducing a termination of the pregnancy
of a minor; requiring the consenting parent or legal
guardian to provide specified proof of identification
and a specified document to the physician; providing
requirements for the document; providing exceptions to
such consent requirement; providing criminal penalties
for physicians; revising provisions relating to the
procedures for judicial waiver to conform to changes
made by the act; amending s. 27.511, F.S.; conforming
a provision to changes made by the act; providing
severability; providing an effective date.



974114

LEGISLATIVE ACTION

Senate

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House

The Committee on Rules (Stargel) recommended the following:

Senate Amendment to Amendment (715312) (with title amendment)

Between lines 4 and 5
insert:

Section 1. Paragraph (e) of subsection (12) of section 390.0111, Florida Statutes, is amended to read:

390.0111 Termination of pregnancies.—

(12) INFANTS BORN ALIVE.—

(e) A person who violates this subsection commits a felony of the third ~~misdemeanor of the first~~ degree, punishable as



974114

provided in s. 775.082, ~~or~~ s. 775.083, or s. 775.084. This subsection shall not be construed as a specific provision of law relating to a particular subject matter that would preclude prosecution of a more general offense, regardless of the penalty.

===== T I T L E A M E N D M E N T =====

And the title is amended as follows:

Delete line 284

and insert:

An act relating to abortion; amending s. 390.0111,
F.S.; reclassifying the criminal offense for a
specified violation; amending s. 390.01114,



101260

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
01/21/2020	.	
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The Committee on Rules (Gibson) recommended the following:

Senate Amendment to Amendment (715312)

Delete line 224
and insert:
by court rule. The proceedings shall be held in chambers,
subject to a judge's availability as required under s. 26.20.



625870

LEGISLATIVE ACTION

Senate

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House

The Committee on Rules (Gibson) recommended the following:

Senate Amendment to Amendment (715312)

Delete line 224
and insert:
by court rule. Subject to a judge's availability as required
under s. 26.20, hearings held under this section shall be held
in chambers or in a similarly private and informal setting
within the courthouse.



715362

LEGISLATIVE ACTION

Senate

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House

The Committee on Rules (Gibson) recommended the following:

Senate Amendment to Amendment (715312) (with title amendment)

Between lines 236 and 237
insert:

(j) The Office of the State Courts Administrator shall develop and publish training materials for use by each clerk of the circuit court to train staff about the procedures and timeframes for judicial waivers of notice and consent provided under this subsection. The training materials must be published on the Office of the State Courts Administrator's website in an



715362

easily downloadable format. Such training materials must include
information that is stated in plain, easily understandable
language.

===== T I T L E A M E N D M E N T =====

And the title is amended as follows:

Delete line 298

and insert:

made by the act; requiring the Office of the State
Courts Administrator to develop and publish materials
for use by clerks of the circuit court to train
certain staff on procedures and timeframes for the
judicial waiver process; requiring the training
materials to be published on the office's website in
an easily downloadable format; requiring the
information in the training materials to be stated in
plain, easily understandable language; amending s.
27.511, F.S.; conforming



199112

LEGISLATIVE ACTION

Senate

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House

The Committee on Rules (Gibson) recommended the following:

Senate Amendment to Amendment (715312) (with title amendment)

Between lines 276 and 277
insert:

Section 4. The Legislature finds that it is an important state interest that clerks of the circuit court provide staff to explain the procedures and timeframes for judicial waivers of consent. Each clerk of the circuit court shall provide one full-time equivalent position for the purpose of implementing the training requirements of s. 390.01114(6)(j), Florida Statutes.



199112

===== T I T L E A M E N D M E N T =====

And the title is amended as follows:

Delete line 300

and insert:

severability; providing a legislative finding;

allocating positions to clerks of the circuit court;

providing an effective date.



510862

LEGISLATIVE ACTION

Senate

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House

The Committee on Rules (Gibson) recommended the following:

Senate Amendment

Delete line 152
and insert:
court proceedings under this section shall be sealed. The
proceedings shall be held in chambers, subject to a judge's
availability as required under s. 26.20. The minor



316896

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
01/21/2020	.	
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The Committee on Rules (Gibson) recommended the following:

Senate Amendment (with title amendment)

Between lines 236 and 237
insert:

(j) The Office of the State Courts Administrator shall develop and publish training materials for use by each clerk of the circuit court to train staff about the procedures and timeframes for judicial waivers of consent provided under this subsection. The training materials must be published on the Office of the State Courts Administrator's website in an easily downloadable format. Such training materials must include



316896

information that is stated in plain, easily understandable
language.

===== T I T L E A M E N D M E N T =====

And the title is amended as follows:

Delete line 40

and insert:

appointed counsel; requiring the Office of the State
Courts Administrator to develop and publish materials
for use by clerks of the circuit court to train
certain staff on procedures and timeframes for the
judicial waiver process; requiring the training
materials to be published on the office's website in
an easily downloadable format; requiring the
information in the training materials to be stated in
plain, easily understandable language; requesting the
Supreme Court to



594366

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
01/21/2020	.	
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The Committee on Rules (Gibson) recommended the following:

Senate Amendment (with title amendment)

Between lines 236 and 237
insert:

(j)1. The Office of the State Courts Administrator shall develop and publish materials informing the public of the procedures for judicial waiver under this subsection. The materials must be published in hard copy format and posted on the Office of the State Courts Administrator's website on the webpage provided in subparagraph 3. in an easily downloadable format. The materials must include information that is stated in



594366

plain, easily understandable language corresponding to a grade 5 reading level and must include all of the following information:

a. An explanation that a minor who is unable to obtain parental consent or a waiver of parental notification for an abortion may petition a circuit court to obtain a judicial waiver.

b. A statement that any information that could be used to identify a minor who petitions the court for a judicial waiver is confidential and exempt from public disclosure, that judges and court staff must maintain that confidentiality, and that any personal identifying information contained in a court record must be kept confidential.

c. A step-by-step guide detailing the procedures for obtaining a judicial waiver, from the initiation of a petition for judicial waiver to a court's final ruling, and, if applicable, by county, an expected timeline for proceedings; where the minor can locate and obtain materials, physically or online; where and how a petition and any necessary paperwork may be filed; and a list of important deadlines.

d. A list of each county's clerk of the court, including addresses, office hours, and the direct contact information for a staff member who is familiar with the judicial waiver procedures in a particular circuit's jurisdiction.

e. Information about how to access the names and contact information for attorneys who provide services on a pro bono basis to minors seeking a judicial waiver.

f. Information about the evidentiary standard that the court is required to use when deciding whether to grant or deny a judicial waiver, including a list of evidence the minor must



594366

provide to the court during the hearing.

2. The Office of the State Courts Administrator must provide an adequate amount of published materials in hard copy to each clerk of the court and to each health care provider that offers abortion services which include all of the information required in subparagraph 1. regarding judicial waiver procedures.

3. The Office of the State Courts Administrator must publish a clearly visible hyperlink on its website which directs the public to a stand-alone webpage. The webpage may not share a uniform resource locator (URL) with any other information and must contain all of the information required in subparagraph 1. The hyperlink to the URL must clearly identify that it provides information regarding the judicial waiver procedures for a minor who is seeking to obtain an abortion without parental consent or notification.

4. At least annually, the Office of the State Courts Administrator must review and, if necessary, update the materials and information required under this paragraph for accuracy, including all contact information for the clerks of the court and the courthouses where a minor may file a petition for a judicial waiver.

===== T I T L E A M E N D M E N T =====

And the title is amended as follows:

Delete line 40

and insert:

appointed counsel; requiring the Office of the State
Courts Administrator to develop and publish certain



594366

70 informational materials in hard copy format and online
71 regarding procedures for obtaining judicial waivers;
72 prescribing the format and content of the materials;
73 providing for the distribution of the materials;
74 requiring the office to publish a clearly visible
75 website hyperlink to a specified webpage containing
76 certain information on the judicial waivers; requiring
77 the office to annually review and update, as
78 necessary, the informational materials, including
79 certain specified information; requesting the Supreme
80 Court to



189152

LEGISLATIVE ACTION

Senate

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House

The Committee on Rules (Gibson) recommended the following:

Senate Amendment (with title amendment)

Delete lines 236 - 237

and insert:

(j) The Office of the State Courts Administrator shall develop and publish training materials for use by each clerk of the circuit court to train staff about the procedures and timeframes for judicial waivers of consent provided under this subsection. The training materials must be published on the Office of the State Courts Administrator's website in an easily downloadable format. Such training materials must include



189152

information that is stated in plain, easily understandable
language.

===== T I T L E A M E N D M E N T =====

And the title is amended as follows:

Delete line 40

and insert:

appointed counsel; requiring the Office of the State
Courts Administrator to develop and publish materials
for use by clerks of the circuit court to train
certain staff on procedures and timeframes for the
judicial waiver process; requiring the training
materials to be published on the office's website in
an easily downloadable format; requiring the
information in the training materials to be stated in
plain, easily understandable language; requesting the
Supreme Court to



907756

LEGISLATIVE ACTION

Senate

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House

The Committee on Rules (Gibson) recommended the following:

Senate Amendment (with title amendment)

Delete lines 236 - 237

and insert:

(j)1. The Office of the State Courts Administrator shall develop and publish materials informing the public of the procedures for judicial waiver under this subsection. The materials must be published in hard copy format and posted on the Office of the State Courts Administrator's website on the webpage provided in subparagraph 3. in an easily downloadable format. The materials must include information that is stated in



907756

plain, easily understandable language corresponding to a grade 5 reading level and must include all of the following information:

a. An explanation that a minor who is unable to obtain parental consent or a waiver of parental notification for an abortion may petition a circuit court to obtain a judicial waiver.

b. A statement that any information that could be used to identify a minor who petitions the court for a judicial waiver is confidential and exempt from public disclosure, that judges and court staff must maintain that confidentiality, and that any personal identifying information contained in a court record must be kept confidential.

c. A step-by-step guide detailing the procedures for obtaining a judicial waiver, from the initiation of a petition for judicial waiver to a court's final ruling, and, if applicable, by county, an expected timeline for proceedings; where the minor can locate and obtain materials, physically or online; where and how a petition and any necessary paperwork may be filed; and a list of important deadlines.

d. A list of each county's clerk of the court, including addresses, office hours, and the direct contact information for a staff member who is familiar with the judicial waiver procedures in a particular circuit's jurisdiction.

e. Information about how to access the names and contact information for attorneys who provide services on a pro bono basis to minors seeking a judicial waiver.

f. Information about the evidentiary standard that the court is required to use when deciding whether to grant or deny a judicial waiver, including a list of evidence the minor must



907756

provide to the court during the hearing.

2. The Office of the State Courts Administrator must provide an adequate amount of published materials in hard copy to each clerk of the court and to each health care provider that offers abortion services which include all of the information required in subparagraph 1. regarding judicial waiver procedures.

3. The Office of the State Courts Administrator must publish a clearly visible hyperlink on its website which directs the public to a stand-alone webpage. The webpage may not share a uniform resource locator (URL) with any other information and must contain all of the information required in subparagraph 1. The hyperlink to the URL must clearly identify that it provides information regarding the judicial waiver procedures for a minor who is seeking to obtain an abortion without parental consent or notification.

4. At least annually, the Office of the State Courts Administrator must review and, if necessary, update the materials and information required under this paragraph for accuracy, including all contact information for the clerks of the court and the courthouses where a minor may file a petition for a judicial waiver.

===== T I T L E A M E N D M E N T =====

And the title is amended as follows:

Delete line 40

and insert:

appointed counsel; requiring the Office of the State
Courts Administrator to develop and publish certain



907756

70 informational materials in hard copy format and online
71 regarding procedures for obtaining judicial waivers;
72 prescribing the format and content of the materials;
73 providing for the distribution of the materials;
74 requiring the office to publish a clearly visible
75 website hyperlink to a specified webpage containing
76 certain information on the judicial waivers; requiring
77 the office to annually review and update, as
78 necessary, the informational materials, including
79 certain specified information; requesting the Supreme
80 Court to



464842

LEGISLATIVE ACTION

Senate

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House

The Committee on Rules (Gibson) recommended the following:

Senate Amendment (with title amendment)

Between lines 292 and 293
insert:

Section 2. The Legislature finds that it is an important state interest that clerks of the circuit court provide staff to explain the procedures and timeframes for judicial waivers of consent. Each clerk of the circuit court shall provide one full-time equivalent position for the purpose of implementing the training requirements of s. 390.01117(6)(j), Florida Statutes.



464842

12 ===== T I T L E A M E N D M E N T =====

13 And the title is amended as follows:

14 Delete line 44

15 and insert:

16 severability; providing a legislative finding;

17 allocating positions to clerks of the circuit court;

18 providing an effective date.

By the Committee on Health Policy; and Senators Stargel, Hutson, Harrell, Gruters, Mayfield, Baxley, Diaz, and Albritton

588-02031-20

2020404c1

1 A bill to be entitled
 2 An act relating to parental consent for abortion;
 3 creating s. 390.01117, F.S.; providing a short title;
 4 defining terms; prohibiting a physician from
 5 performing an abortion on a minor unless the physician
 6 has been presented with consent from the minor's
 7 parent or guardian, as appropriate; providing an
 8 exception for a medical emergency; requiring a monthly
 9 report to be filed by certain physicians with the
 10 Department of Health on a form adopted by department
 11 rule; requiring the department to compile data
 12 collected from such forms and make it available on its
 13 website; authorizing a minor to petition any circuit
 14 court in which the minor resides for a waiver of
 15 consent required to obtain an abortion; requiring a
 16 specified statement to be included in the petition;
 17 providing for court-appointed counsel and
 18 confidentiality; requiring the court to give
 19 preference to waiver of consent proceedings and
 20 requiring a court to rule within a specified
 21 timeframe; providing for an extension of time at the
 22 request of the minor; authorizing a minor to petition
 23 for a hearing upon the expiration of the time allowed
 24 and requiring the chief judge of the circuit to ensure
 25 that a hearing is held and that an order is entered
 26 within specified timeframes; providing for appeals
 27 within a specified timeframe; requiring the court to
 28 dismiss the petition if it does not make specified
 29 findings; requiring the court to consider undue

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CODING: Words ~~stricken~~ are deletions; words underlined are additions.

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30 influence on the minor's decision and specified
 31 factors; requiring the court to report any findings of
 32 evidence of child abuse or sexual abuse of the
 33 petitioner; requiring a court to provide for a written
 34 transcript of waiver of consent proceedings and
 35 include certain findings and conclusions in its order;
 36 prohibiting filing fees or costs for a minor who
 37 petitions the court for a waiver of consent;
 38 specifying that a county is not required to pay the
 39 salaries, costs, or expenses of certain court-
 40 appointed counsel; requesting the Supreme Court to
 41 adopt certain rules and forms relating to waiver of
 42 consent proceedings; providing criminal penalties and
 43 disciplinary action; providing construction and
 44 severability; providing an effective date.

45
 46 WHEREAS, the United States Supreme Court has consistently
 47 recognized that a state statute requiring parental consent to a
 48 minor's abortion is constitutional if it provides a judicial
 49 alternative in which the consent is waived if the minor is
 50 mature enough to make the decision to obtain an abortion or if
 51 the abortion is in the minor's best interest, and

52 WHEREAS, the medical, emotional, and psychological
 53 consequences associated with having an abortion are serious and
 54 can be long lasting, particularly when a patient is immature,
 55 and

56 WHEREAS, the status of minors under the law is unique
 57 because of their need for parental guidance and decisionmaking,
 58 and

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WHEREAS, minors' disability of nonage defaults to a legal disability to contract which only the Legislature can remove, and such legislative removals of disability of nonage are codified in chapter 743, Florida Statutes, and

WHEREAS, while the laws of this state allow minors who are mothers to make life and death decisions for their children, there is a distinction between making day-to-day decisions for a child and deciding to abort a child, and

WHEREAS, the only circumstance in which medical decisions for a minor are not made by the minor's parents is when the minor is pregnant, and

WHEREAS, s. 743.065, Florida Statutes, allows unwed pregnant minors to make medical decisions relating to their pregnancies and allows them to consent to the performance of medical or surgical care of services for their children, except for decisions to terminate pregnancies, and

WHEREAS, the United States Supreme Court has determined that the constitutional rights of minors are not equal to the rights of adults because children are vulnerable and unable to make informed critical decisions and because of the unique role of parents in childrearing, and

WHEREAS, requiring parental consent for a minor to obtain an abortion will serve the interests of this state by protecting immature minors, preserving the family unit, and guarding the fundamental right of parents to raise their children, and

WHEREAS, the inclusion of provisions for a medical emergency exception to the consent requirement; the judicial waiver of consent process; the appointment of counsel for indigent minors; and procedural safeguards, including guidelines

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relating to admissible evidence and a required hearing within an extendable 3-day period after the filing of a petition for a judicial waiver of consent, are necessary to further the interests of this state, but accomplish this purpose by imposing the least restrictive means, NOW, THEREFORE,

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 390.01117, Florida Statutes, is created to read:

390.01117 Parental consent for abortion.-

(1) SHORT TITLE.-This section may be cited as the "Parental Consent for Abortion Act."

(2) DEFINITIONS.-As used in this section, the term:

(a) "Consent" means a notarized written statement signed by a minor and either her mother, her father, or her legal guardian declaring that the minor is pregnant, that she intends to seek an abortion, and that her mother, father, or legal guardian, as applicable, consents to the abortion because the abortion is in the best interest of the minor.

(b) "Minor" means an unemancipated person younger than 18 years of age.

(3) CONSENT OF ONE PARENT OR GUARDIAN REQUIRED.-A physician may not perform an abortion on a minor unless the physician has been presented with consent as defined in this section.

(4) EXCEPTIONS.-Consent is not required under subsection (3) if the attending physician certifies in the minor's medical record that a medical emergency, as defined in s. 390.01114(2)(d), exists and there is insufficient time to obtain

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consent or if consent is waived under subsection (6).

(5) REPORTS.—

(a) A physician who has performed an abortion on a minor in the past calendar month shall submit a monthly report to the department which must include the following information for each minor upon whom an abortion was performed:

1. If the abortion was performed with consent;

2. If the abortion was performed during a medical emergency that excepted the minor from the consent requirement, and the nature of the medical emergency;

3. If the abortion was performed with a judicial waiver of consent;

4. Her age; and

5. The number of times she has been pregnant and the number of abortions that have been performed on her.

(b) The department shall adopt by rule a form to be used for such monthly reports. Patient names may not be included on the forms. The department shall prepare an annual compilation of the data reported and make it available to the public on the department website.

(6) PROCEDURE FOR JUDICIAL WAIVER OF CONSENT.—

(a) A minor may petition any circuit court in which the minor resides for a waiver of the consent required to obtain an abortion and may participate in proceedings on her own behalf. The petition must include a statement that the minor is pregnant and is unemancipated, that consent from a parent or a legal guardian of the minor has not been obtained, and that the minor wishes to obtain an abortion without first obtaining consent. The circuit court shall advise the minor that she has a right to

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court-appointed counsel and shall provide her with counsel upon her request. The court also may appoint a guardian ad litem for the minor. A guardian ad litem appointed under this subsection must maintain the confidentiality of the minor's identity.

(b) Court proceedings under this subsection shall be confidential and must ensure the anonymity of the minor. All court proceedings under this section shall be sealed. The minor may file her petition in the court using a pseudonym or using solely her initials. All documents related to this petition shall be confidential and may not be made available to the public. These proceedings shall be given precedence over other pending matters to the extent necessary to ensure that the court reaches a decision promptly. The court shall rule, and issue written findings of fact and conclusions of law, within 3 business days after the petition is filed, except that the 3-business-day limitation may be extended at the request of the minor.

1. If the court fails to rule within the 3-business-day period and an extension has not been requested, the minor may immediately petition for a hearing upon the expiration of the 3-business-day period to the chief judge of the circuit, who must ensure that a hearing is held within 48 hours after receipt of the minor's petition and that an order is entered within 24 hours after the hearing.

2. If the circuit court does not grant a judicial waiver of consent, the minor has the right to an appeal. An appellate court must rule within 7 days after receipt of the appeal, but a ruling may be remanded with further instruction, in which case a ruling must be made within 3 business days after the remand. The

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reason for overturning a ruling on appeal must be based on abuse of discretion by the court and may not be based on the weight of the evidence presented to the circuit court, since the proceeding is a nonadversarial proceeding.

(c) If the court finds, by clear and convincing evidence, that the minor is sufficiently mature to decide whether to terminate her pregnancy, the court shall issue an order authorizing the minor to obtain an abortion without the consent of a parent or guardian. If the court does not make the finding specified in this paragraph or paragraph (d), it must dismiss the petition. The court shall consider whether there may be any undue influence by another on the minor's decision to have an abortion and all of the following factors concerning the minor:

1. Age.

2. Overall intelligence.

3. Emotional development and stability.

4. Credibility and demeanor as a witness.

5. Ability to accept responsibility.

6. Ability to assess both the immediate and long-range consequences of her choices.

7. Ability to understand and explain the medical risks of terminating her pregnancy and to apply that understanding to her decision.

(d) If the court finds, by a preponderance of the evidence, that the petitioner is the victim of child abuse or sexual abuse, as those terms are defined in s. 390.01114(2), inflicted by one or both of her parents or her guardian, or finds, by clear and convincing evidence, that requiring the consent of a parent or guardian is not in the best interest of the

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petitioner, the court shall issue an order authorizing the minor to obtain an abortion without the consent of a parent or guardian. The best-interest standard does not include financial best interest or financial considerations or the potential financial impact on the minor or her family if she does not terminate the pregnancy. If the court finds evidence of child abuse or sexual abuse of the petitioner by any person, the court shall report the evidence of child abuse or sexual abuse of the petitioner, as provided in s. 39.201. If the court does not make the finding specified in this paragraph or paragraph (c), it must dismiss the petition.

(e) A court that conducts proceedings under this section shall:

1. Provide for a written transcript of all testimony and proceedings;

2. Issue a final written order containing factual findings and legal conclusions supporting its decision, including factual findings and legal conclusions relating to the maturity of the minor as provided under paragraph (c); and

3. Order that a confidential record be maintained.

(f) All hearings under this section, including appeals, shall remain confidential and closed to the public, as provided by court rule.

(g) An expedited appeal shall be made available, as the Supreme Court provides by rule, to any minor to whom the circuit court denies a waiver of consent. An order authorizing an abortion without consent is not subject to appeal.

(h) Filing fees or court costs may not be required of any minor who petitions a court for a waiver of consent under this

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subsection at either the trial or the appellate level.

(i) A county is not required to pay the salaries, costs, or expenses of any counsel appointed by the court under this subsection.

(7) RULEMAKING.—The Supreme Court is requested to adopt rules and forms for petitions to ensure that proceedings under subsection (6) are handled expeditiously and in a manner consistent with this section. The Supreme Court is also requested to adopt rules to ensure that the hearings protect the confidentiality of the minor's identity and the confidentiality of the proceedings.

(8) CRIMINAL PENALTIES AND CIVIL REMEDIES.—

(a) Any person who willfully and intentionally performs an abortion with knowledge that, or with reckless disregard as to whether, the minor upon whom the abortion is to be performed is unemancipated without obtaining the required consent commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083. It is a defense to prosecution under this section that the minor falsely represented her age or identity to the physician to be at least 18 years of age by displaying an apparently valid governmental record of identification such that a careful and prudent person under similar circumstances would have relied on the representation. The defense does not apply if the physician is shown to have had independent knowledge of the minor's actual age or identity or failed to use due diligence in determining her age or identity.

(b) Any person not authorized to provide consent under this section who provides consent commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

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(c) Failure to obtain consent from a person from whom consent is required under this section is prima facie evidence of failure to obtain consent and of interference with family relations in appropriate civil actions. Such prima facie evidence does not apply to any issue other than failure to obtain consent from the parent or legal guardian and interference with family relations in appropriate civil actions. The civil action may be based on a claim that the act was a result of negligence, gross negligence, wantonness, willfulness, intention, or other legal standard of care. Exemplary damages may be awarded in appropriate civil actions relevant to violations of this section.

(d) Failure to comply with the requirements of this section constitutes grounds for disciplinary action under each respective practice act and under s. 456.072.

(9) CONSTRUCTION.—

(a) This section may not be construed to create or recognize a right to abortion.

(b) This section may not be construed to limit the common law rights of parents or legal guardians.

(c) By enacting this section, the Legislature does not intend to make lawful an abortion that is currently unlawful.

(10) SEVERABILITY.—Any provision of this section held to be invalid or unenforceable by its terms, or as applied to any person or circumstance, shall be construed so as to give it the maximum effect permitted by law, unless such holding is one of utter invalidity or unenforceability, in which event such provision shall be deemed severable and may not affect the remainder hereof or the application of such provision to other

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291 persons not similarly situated or to other, dissimilar
292 circumstances.

293 Section 2. This act shall take effect July 1, 2020.

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Rules

BILL: CS/SB 406

INTRODUCER: Health Policy Committee and Senator Stargel

SUBJECT: Public Records/Minor's Petition to Waive Consent/Abortion

DATE: January 17, 2020

REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. <u>Looke / Kibbey</u>	<u>Brown</u>	<u>HP</u>	Fav/CS
2. <u>Ponder</u>	<u>McVaney</u>	<u>GO</u>	Favorable
3. <u>Looke / Kibbey</u>	<u>Phelps</u>	<u>RC</u>	Pre-meeting

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 406 creates s. 390.01118, F.S., to make confidential and exempt from public inspection and copying any information that can be used to identify a minor who is petitioning a circuit court for a judicial waiver pursuant to the Parental Consent for Abortion Act established in CS/SB 404. Specifically, the bill provides that any such information is:

- Confidential and exempt from article I, section 24(a) of the State Constitution, if held by a circuit court or an appellate court; and
- Confidential and exempt from section 119.07(1) and article I, section 24(a) of the State Constitution, if held by the office of criminal conflict and civil regional counsel or the Justice Administrative Commission.

The bill provides legislative findings that the public records exemption is a public necessity and provides that the public records exemption is subject to the Open Government Sunset Review Act and will be repealed on October 2, 2025, unless reviewed and saved from repeal by the Legislature.

The bill is not expected to impact state and local revenues and expenditures.

The bill takes effect on the same date that CS/SB 404 (July 1, 2020) or similar legislation takes effect.

II. Present Situation:

Access to Public Records - Generally

The Florida Constitution provides that the public has the right to inspect or copy records made or received in connection with official governmental business.¹ The right to inspect or copy applies to the official business of any public body, officer, or employee of the state, including all three branches of state government, local governmental entities, and any person acting on behalf of the government.²

Additional requirements and exemptions related to public records are found in various statutes and rules, depending on the branch of government involved. For instance, section 11.0431, Florida Statutes (F.S.), provides public access requirements for legislative records. Relevant exemptions are codified in s. 11.0431(2)-(3), F.S., and the statutory provisions are adopted in the rules of each house of the legislature.³ Florida Rule of Judicial Administration 2.420 governs public access to judicial branch records.⁴ Lastly, chapter 119, F.S., provides requirements for public records held by executive agencies.

Executive Agency Records – The Public Records Act

Chapter 119, F.S., known as the Public Records Act, provides that all state, county and municipal records are open for personal inspection and copying by any person, and that providing access to public records is a duty of each agency.⁵

A public record includes virtually any document or recording, regardless of its physical form or how it may be transmitted.⁶ The Florida Supreme Court has interpreted the statutory definition of “public record” to include “material prepared in connection with official agency business which is intended to perpetuate, communicate, or formalize knowledge of some type.”⁷

The Florida Statutes specify conditions under which public access to governmental records must be provided. The Public Records Act guarantees every person’s right to inspect and copy any state or local government public record at any reasonable time, under reasonable conditions, and

¹ FLA. CONST. art. I, s. 24(a).

² *Id.*

³ See Rule 1.48, *Rules and Manual of the Florida Senate*, (2018-2020) and Rule 14.1, *Rules of the Florida House of Representatives*, Edition 2, (2018-2020)

⁴ *State v. Wooten*, 260 So. 3d 1060 (Fla. 4th DCA 2018).

⁵ Section 119.01(1), F.S. Section 119.011(2), F.S., defines “agency” as “any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency.”

⁶ Section 119.011(12), F.S., defines “public record” to mean “all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency.”

⁷ *Shevin v. Byron, Harless, Schaffer, Reid and Assoc., Inc.*, 379 So. 2d 633, 640 (Fla. 1980).

under supervision by the custodian of the public record.⁸ A violation of the Public Records Act may result in civil or criminal liability.⁹

The Legislature may exempt public records from public access requirements by passing a general law by a two-thirds vote of both the House and the Senate.¹⁰ The exemption must state with specificity the public necessity justifying the exemption and must be no broader than necessary to accomplish the stated purpose of the exemption.¹¹

When creating or expanding a public records exemption, the Legislature may provide that a record is “confidential and exempt” or “exempt.”¹² Custodians of records designated as “exempt” are not prohibited from disclosing the record; rather, the exemption means that the custodian cannot be compelled to disclose the record.¹³ Custodians of records designated as “confidential and exempt” may not disclose the record except under circumstances specifically defined by the Legislature.¹⁴

Public Records and the Judicial Branch

The Public Records Act does not apply to judicial records.¹⁵ As a coequal branch of government, the judicial branch “is not an ‘agency’ subject to the supervision or control by another coequal branch of government.”¹⁶

However, the judicial branch is required to maintain access to public records and court proceedings pursuant to article 1, section 24 of the Florida Constitution.¹⁷ To meet its

⁸ Section 119.07(1)(a), F.S.

⁹ Section 119.10, F.S. Public records laws are found throughout the Florida Statutes, as are the penalties for violating those laws.

¹⁰ FLA. CONST. art. I, s. 24(c).

¹¹ *Id.* See, e.g., *Halifax Hosp. Medical Center v. News-Journal Corp.*, 724 So. 2d 567 (Fla. 1999) (holding that a public meetings exemption was unconstitutional because the statement of public necessity did not define important terms and did not justify the breadth of the exemption); *Baker County Press, Inc. v. Baker County Medical Services, Inc.*, 870 So. 2d 189 (Fla. 1st DCA 2004) (holding that a statutory provision written to bring another party within an existing public records exemption is unconstitutional without a public necessity statement).

¹² If the Legislature designates a record as confidential, such record may not be released to anyone other than the persons or entities specifically designated in the statutory exemption. *WFTV, Inc. v. The Sch. Bd. of Seminole*, 874 So. 2d 48, 53 (Fla. 5th DCA 2004).

¹³ See *Williams v. City of Minneola*, 575 So. 2d 683, 687 (Fla. 5th DCA 1991).

¹⁴ *WFTV, Inc. v. The School Board of Seminole*, 874 So. 2d 48 (Fla. 5th DCA 2004).

¹⁵ *Locke v. Hawkes*, 595 So. 2d 32 (Fla. 1992). See also *Times Pub. Co. v. Ake*, 660 So. 2d 255 (Fla. 1995). Likewise, the Public Records Act does not apply to the Legislature. Legislative records are public pursuant to s. 11.0431, F.S. Public records exemptions for the Legislature are codified primarily in s. 11.0431(2)-(3), F.S., and adopted in the rules of each house of the Legislature.

¹⁶ *Times Pub. Co. v. Ake*, 645 So. 2d 1003, 1004 (Fla. 2d DCA 1994), *approved*, 660 So. 2d 255 (Fla. 1995). See also FLA. CONST., art. II, s. 3 (providing for the separation of powers between the executive, judicial, and legislative branches; stating “[n]o person belonging to one branch shall exercise any powers appertaining to either of the other branches unless expressly provided herein.”). See also Florida Attorney General, GOVERNMENT-IN-THE-SUNSHINE MANUAL, A REFERENCE FOR COMPLIANCE WITH FLORIDA’S PUBLIC RECORDS AND OPEN MEETINGS LAWS, *Judiciary* at 10-11, (Vol. 39, 2017 Ed.), available at [http://myfloridalegal.com/webfiles.nsf/wf/mnos-akbs9l/\\$file/2017+sunshine+law+manual.pdf](http://myfloridalegal.com/webfiles.nsf/wf/mnos-akbs9l/$file/2017+sunshine+law+manual.pdf).

¹⁷ See GOVERNMENT-IN-THE-SUNSHINE MANUAL at 60-65, *supra*. Even before article I, section 24 was passed to require access to public records and meetings by all branches of government, the Florida Supreme Court had recognized that access to court proceedings must be safeguarded as open, “public events.” See *Barron v. Florida Freedom Newspapers, Inc.*, 531 So. 2d 113, 116–19 (Fla. 1988) (“[B]oth civil and criminal court proceedings in Florida are public events and adhere to the

constitutional obligation, the judicial branch adopted Florida Rule of Judicial Administration 2.420 entitled “Public Access to and Protection of Judicial Branch Records.” In pertinent part, Rule 2.420 provides:

(a) Scope and Purpose. Subject to the rulemaking power of the Florida Supreme Court provided by article V, section 2, Florida Constitution, the following rule shall govern public access to and the protection of the records of the judicial branch of government. The public shall have access to all records of the judicial branch of government, except as provided below. . . .

(c) Confidential and Exempt Records. The following records of the judicial branch shall be confidential:

-
- (7) All records made confidential under the Florida and United States Constitutions and Florida and federal law;
- (8) All records presently deemed to be confidential by court rule, including the Rules for Admission to the Bar, by Florida Statutes, by prior case law of the State of Florida, and by the rules of the Judicial Qualifications Commission;

(d) Procedures for Determining Confidentiality of Court Records.

- (1) The clerk of the court shall designate and maintain the confidentiality of any information contained within a court record that is described in subdivision (d)(1)(A) or (d)(1)(B) of this rule.

As evidenced by Rule 2.420, the judiciary may adopt, and has adopted, “legislative statements of policy as part of the rules governing matters within the jurisdiction of the judiciary,” including the disclosure or public inspection of court records.¹⁸

well-established common law right of access to court proceedings and records. . . . The reason for openness is basic to our form of government. Public trials are essential to the judicial system’s credibility in a free society.”) (citing *Craig v. Harney*, 331 U.S. 367, 374 (1947); *Richmond Newspapers, Inc. v. Virginia*, 448 U.S. 555, 580 n. 17 (1980)). See also William A. Buzzett and Deborah K. Kearney, *Commentary to 1992 Addition [of FLA. CONST., art. I, s. 24]*, Fla. Stat. Ann. (Westlaw 1992), noting the following history leading to the passage of article I, section 24:

Florida’s public records and open meetings laws have been a matter of statute since 1967. (Earlier requirements for public records had existed for some time.) Those statutes were not designed to apply to the legislative or judicial branches of state government, but were expressly intended to apply throughout the executive branch and to local governments, including counties, municipalities, and districts. The Supreme Court, the Senate and the House of Representatives each provided some form of access to records and proceedings by rule. In 1978, the Constitution Revision Commission proposed elevating these laws to constitutional status and applying them to records and meetings of the Legislature. That proposal was not adopted.

In *Locke v. Hawkes*, 595 So. 2d 32 (Fla. 1992), the Florida Supreme Court determined that, based on separation of powers requirements, the public records law did not apply to the legislative branch, nor to constitutional officers of the other branches. The decision meant that records of legislators, as well as those of the governor and cabinet officers, at least with respect to the exercise of their constitutional powers, were not subject to the law. The decision caused a stir among the public and particularly the press. Efforts were quickly begun for constitutional change, which concluded with the successful passage of this amendment.

¹⁸ See *Florida Pub. Co. v. State*, 706 So. 2d 54, 56 (Fla. 1st DCA 1998) (citing *Timmons v. Combs*, 608 So.2d 1, 3 (Fla.1992)). See also *Barron*, 531 So. 2d 113, 118 (“closure of court proceedings or records should occur only when

Open Government Sunset Review Act

The Open Government Sunset Review Act (the Act) prescribes a legislative review process for newly created or substantially amended¹⁹ public records or open meetings exemptions,²⁰ with specified exceptions.²¹ It requires the automatic repeal of such exemption on October 2nd of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.²²

The Act provides that a public records or open meetings exemption may be created or maintained only if it serves an identifiable public purpose and is no broader than is necessary to meet such public purpose.²³ An exemption serves an identifiable purpose if it meets one of the following purposes *and* the Legislature finds that the purpose of the exemption outweighs open government policy and cannot be accomplished without the exemption:

- It allows the state or its political subdivisions to effectively and efficiently administer a governmental program, and administration would be significantly impaired without the exemption;²⁴
- It protects sensitive, personal information, the release of which would be defamatory, cause unwarranted damage to the good name or reputation of the individual, or would jeopardize the individual's safety. If this public purpose is cited as the basis of an exemption, however, only personal identifying information is exempt;²⁵ or
- It protects information of a confidential nature concerning entities, such as trade or business secrets.²⁶

necessary (a) to comply with established public policy set forth in the constitution, statutes, rules, or case law; (b) to protect trade secrets; (c) to protect a compelling governmental interest [e.g., national security; confidential informants]; (d) to obtain evidence to properly determine legal issues in a case; (e) to avoid substantial injury to innocent third parties [e.g., to protect young witnesses from offensive testimony; to protect children in a divorce]; or (f) to avoid substantial injury to a party by disclosure of matters protected by a common law or privacy right not generally inherent in the specific type of civil proceeding sought to be closed. We find that, under appropriate circumstances, the constitutional right of privacy established in Florida by the adoption of article I, section 23, could form a constitutional basis for closure under (e) or (f). . . . Further, we note that it is generally the content of the subject matter rather than the status of the party that determines whether a privacy interest exists and closure should be permitted. However, a privacy claim may be negated if the content of the subject matter directly concerns a position of public trust held by the individual seeking closure.”) (holding that while a court has the power to close a proceeding, because a “strong presumption of openness exists for all court proceedings,” the court must consider certain factors before granting a request to close a proceeding).

¹⁹ An exemption is considered to be substantially amended if it is expanded to include more records or information or to include meetings as well as records. Section 119.15(4)(b), F.S.

²⁰ Section 119.15, F.S. An exemption is substantially amended if the amendment expands the scope of the exemption to include more records or information or to include meetings as well as records (s. 119.15(4)(b), F.S.). The requirements of the Act do not apply to an exemption that is required by federal law or that applies solely to the Legislature or the State Court System (s. 119.15(2), F.S.).

²¹ Section 119.15(2)(a) and (b), F.S., provide that exemptions that are required by federal law or are applicable solely to the Legislature or the State Court System are not subject to the Open Government Sunset Review Act.

²² Section 119.15(3), F.S.

²³ Section 119.15(6)(b), F.S.

²⁴ Section 119.15(6)(b)1., F.S.

²⁵ Section 119.15(6)(b)2., F.S.

²⁶ Section 119.15(6)(b)3., F.S.

The Act also requires specified questions to be considered during the review process.²⁷ In examining an exemption, the Act directs the Legislature to carefully question the purpose and necessity of reenacting the exemption.

If the exemption is continued and expanded, then a public necessity statement and a two-thirds vote for passage are required.²⁸ If the exemption is continued without substantive changes or if the exemption is continued and narrowed, then a public necessity statement and a two-thirds vote for passage are *not* required. If the Legislature allows an exemption to sunset, the previously exempt records will remain exempt unless provided for by law.²⁹

Office of Criminal Conflict and Civil Regional Counsel

In 2007, the Legislature created the Office of Criminal Conflict and Civil Regional Counsel (Office) to provide adequate representation to persons entitled to court-appointed counsel under the U.S. or Florida Constitution or as authorized by general law. In creating the Office, the Legislature intended to provide adequate representation in a fiscally sound manner, while safeguarding constitutional principles.³⁰ The Office provides counsel only in cases where a judge appoints the office. Counsel may be provided in both criminal and civil cases.³¹

The Justice Administrative Commission

The Justice Administrative Commission (JAC), created in 1965, provides administrative services on behalf of 49 judicial related offices. Currently, the JAC administratively serves 20 Offices of State Attorney, 20 Offices of Public Defender, five Offices of Criminal Conflict and Civil Regional Counsel, three Offices of Capital Collateral Regional Counsel, and the Statewide Guardian ad Litem Program. Services provided are primarily in the areas of accounting, budget, financial services, and human resources. While the JAC administratively serves these offices, the JAC does not supervise, direct, or control the offices it serves.³²

Parental Notice of Abortion Act and Waiver of Notice Requirements

Section 390.01114, F.S., the Parental Notice of Abortion Act, requires a physician to give notice to one parent or to the legal guardian prior to terminating the pregnancy of a minor. Exceptions are provided. Section 390.01114(4), F.S., sets forth the procedure for a minor to seek a judicial waiver of the notice requirement. Under s. 390.01116, F.S., when a minor petitions a circuit

²⁷ Section 119.15(6)(a), F.S. The specified questions are:

- What specific records or meetings are affected by the exemption?
- Whom does the exemption uniquely affect, as opposed to the general public?
- What is the identifiable public purpose or goal of the exemption?
- Can the information contained in the records or discussed in the meeting be readily obtained by alternative means? If so, how?
- Is the record or meeting protected by another exemption?
- Are there multiple exemptions for the same type of record or meeting that it would be appropriate to merge?

²⁸ See generally s. 119.15, F.S.

²⁹ Section 119.15(7), F.S.

³⁰ Section 27.511, F.S.

³¹ See <https://rc1fl.com/about-us/case-types>, (last visited on November 7, 2019).

³² See <https://www.justiceadmin.org/commissioners/history.aspx>, (last visited on November 7, 2019).

court for a waiver of the notice requirements pertaining to a minor seeking to terminate her pregnancy, any information in documents related to the petition which could be used to identify the minor is confidential and exemption from s. 119.07(1), F.S., and s. 24(a), Art. I of the State Constitution. A subsequent amendment to Rule 2.420 was adopted to direct clerks of court to designate and maintain the confidentiality of this information within a court record.³³

III. Effect of Proposed Changes:

Section 1 creates s. 390.01118, F.S., to establish a public records exemption for any information that can be used to identify a minor who is petitioning a circuit court for a judicial waiver pursuant to the Parental Consent for Abortion Act established in CS/SB 404, if CS/SB 404 or a similar bill becomes law. Specifically, the bill provides that any such information is:

- Confidential and exempt from article I, section 24(a) of the State Constitution, if held by a circuit court or an appellate court; and
- Confidential and exempt from section 119.07(1) and article I, section 24(a) of the State Constitution, if held by the Office or the JAC.

Section 2 provides legislative findings of public necessity as follows:

- It is a public necessity to keep confidential and exempt from public disclosure information contained in a court record which could be used to identify a minor who is petitioning the court for a waiver from the statutory requirement that a parent or legal guardian give consent before the minor may obtain an abortion. The information contained in these records is of a sensitive, personal nature regarding a minor petitioner, release of which could harm the reputation of the minor, as well as jeopardize her safety. Disclosure of this information could jeopardize the safety of the minor in instances when child abuse or child sexual abuse against her is present by exposing her to further acts of abuse from an abuser who, if the information was not held confidential, could learn of her pregnancy, her plans to obtain an abortion, and her petition to the court.
- It is a public necessity to keep this identifying information in records held by the court confidential and exempt in order to protect the privacy of the minor. The State Constitution contains an express right of privacy in article I, section 23. Further, the United States Supreme Court has repeatedly required parental-consent laws to contain judicial-bypass procedures and to preserve confidentiality at every level of court proceedings in order to protect the privacy rights of the minor. Without the confidentiality and exemption provided in this act, the disclosure of personal identifying information would violate the right of privacy of the minor and would place the constitutionality of the state's program providing for a judicial waiver of consent in question.

The bill also provides that the public records exemption is subject to the Open Government Sunset Review Act and will be repealed on October 2, 2025, unless reviewed and saved from repeal by the Legislature.

³³ Chapter 2005-52, L.O.F., creating a new parental notice of abortion act, had the following effective date: "This act shall take effect upon the adoption of rules and forms by the Supreme Court, but no later than July 1, 2005." It was approved by the Governor on May 25, 2005. Chapter 2005-104, L.O.F., amending an accompanying public records exemption, had an effective date simultaneous with the underlying parental notice law and was approved by the Governor on June 1, 2005. On June 30, 2005, the Supreme Court issued an opinion adopting rule amendments related to the new laws.

Section 3 provides the bill takes effect on the same date that CS/SB 404 or similar legislation takes effect if such legislation is adopted in the same legislative session or an extension thereof and becomes a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Not applicable. The bill does not require counties or municipalities to take action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

B. Public Records/Open Meetings Issues:

Voting Requirement

Article I, section 24(c) of the State Constitution requires a two-thirds vote of the members present and voting for final passage of a bill creating or expanding an exemption to the public records requirements. This bill enacts a new exemption for information that can be used to identify a minor who is petitioning a circuit court for a judicial waiver pursuant to the Parental Consent for Abortion Act established in CS/SB 404. Thus, the bill requires a two-thirds vote to be enacted.

Public Necessity Statement

Article I, section 24(c) of the State Constitution requires a bill that creates or expands an exemption to the public records requirements to state with specificity the public necessity justifying the exemption. Section 2 of the bill contains a statement of public necessity for the exemptions.

Breadth of Exemption

Article I, section 24(c) of the State Constitution requires an exemption to the public records requirements to be no broader than necessary to accomplish the stated purpose of the law. The purpose of this bill is to protect information that can be used to identify a minor who is petitioning a circuit court for a judicial waiver pursuant to the Parental Consent for Abortion Act established in CS/SB 404. This bill exempts only such information from the public records requirements. The exemption does not appear to be broader than necessary to accomplish the purpose of the bill.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

The public necessity statement in section 2 of the bill provides findings that the State Constitution contains an express right of privacy in article I, section 23. Further, the United States Supreme Court has repeatedly required parental consent laws to contain judicial bypass procedures and to preserve confidentiality at every level of court proceedings in order to protect the privacy rights of the minor. Without the confidentiality and public records exemption provided in this bill, the disclosure of personal identifying information would violate the right of privacy of the minor and would place the constitutionality of the state's process to provide for a judicial waiver of consent in question.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

The private sector will be subject to the any cost associated with the custodian of records making redactions necessary in response to a public records request.

C. Government Sector Impact:

The custodian of the records made exempt by this bill will incur costs related to the redaction of records in responding to public records requests.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates section 390.01118 of the Florida Statutes.

IX. Additional Information:**A. Committee Substitute – Statement of Substantial Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Health Policy on December 10, 2019:

The CS revises the contingent effective date so that the bill will take effect on the same date that CS/SB 404 or similar legislation takes effect if such legislation is adopted in the same legislative session or an extension thereof and becomes a law.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.



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LEGISLATIVE ACTION

Senate

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House

The Committee on Rules (Stargel) recommended the following:

Senate Amendment

Delete lines 19 - 20
and insert:
judicial waiver, as provided in s. 390.01114, of the consent
requirements under the Parental Notice of and Consent for
Abortion Act is:

By the Committee on Health Policy; and Senator Stargel

588-02033-20

2020406c1

A bill to be entitled

An act relating to public records; creating s. 390.01118, F.S.; providing a public records exemption for information that could identify a minor which is contained in a record held by the court relating to the minor's petition to waive consent requirements to obtain an abortion; providing for future legislative review and repeal under the Open Government Sunset Review Act; providing a statement of public necessity; providing a contingent effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 390.01118, Florida Statutes, is created to read:

390.01118 Public records exemptions; minors seeking waiver of consent requirements.—Any information that can be used to identify a minor who is petitioning a circuit court for a judicial waiver, as provided in s. 390.01117, of the consent requirements under the Parental Consent for Abortion Act is:

(1) Confidential and exempt from s. 24(a), Art. I of the State Constitution, if held by a circuit court or an appellate court.

(2) Confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution, if held by the office of criminal conflict and civil regional counsel or the Justice Administrative Commission.

This section is subject to the Open Government Sunset Review Act

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in accordance with s. 119.15 and shall stand repealed on October 2, 2025, unless reviewed and saved from repeal through reenactment by the Legislature.

Section 2. (1) The Legislature finds that it is a public necessity to keep confidential and exempt from public disclosure information contained in a court record which could be used to identify a minor who is petitioning the court for a waiver from the statutory requirement that a parent or legal guardian give consent before the minor may obtain an abortion. The information contained in these records is of a sensitive, personal nature regarding a minor petitioner, release of which could harm the reputation of the minor, as well as jeopardize her safety. Disclosure of this information could jeopardize the safety of the minor in instances when child abuse or child sexual abuse against her is present by exposing her to further acts of abuse from an abuser who, if the information was not held confidential, could learn of her pregnancy, her plans to obtain an abortion, and her petition to the court.

(2) The Legislature further finds that it is a public necessity to keep this identifying information in records held by the court confidential and exempt in order to protect the privacy of the minor. The State Constitution contains an express right of privacy in s. 23 of Article I. Further, the United States Supreme Court has repeatedly required parental-consent laws to contain judicial-bypass procedures and to preserve confidentiality at every level of court proceedings in order to protect the privacy rights of the minor. Without the confidentiality and exemption provided in this act, the disclosure of personal identifying information would violate the

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59 right of privacy of the minor and would place the
60 constitutionality of the state's program providing for a
61 judicial waiver of consent in question. Thus, the
62 confidentiality and exemption provided by this act are necessary
63 for the effective administration of the Parental Consent for
64 Abortion Act, for which administration would be impaired without
65 the exemption.

66 Section 3. This act shall take effect on the same date that
67 SB 404 or similar legislation takes effect if such legislation
68 is adopted in the same legislative session or an extension
69 thereof and becomes a law.